

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE MATTER OF:

NEKTAR THERAPEUTICS,

Plaintiff, Case No.

vs. 3:23-CV-03943-JD

ELI LILLY & CO.,

Defendant.

**** CONFIDENTIAL ****

VIDEOTAPED DEPOSITION OF MARK WILSON

(Held Remotely)

Monday, May 5, 2025

3:00 p.m. (PT)

Stenographically Reported By:

Joan Ferrara, RMR, FCRR

Job No. 2025-982547

1 MR. BATTER: We got one.

2 MR. MOORMAN: That was easy.

3 BY MR. MOORMAN:

4 Q. When did you retain Quinn

5 Emanuel, Mr. Wilson? Just the date or

6 approximate date.

7 A. I believe it was late June of

8 2023.

9 Q. And then, Mr. Wilson, fair to say
10 you never update the subject matters that
11 documents -- strike that.

12 You never updated these three
13 bullets on Exhibit 1462 to cover broader
14 subjects than what's identified in the
15 bullets, right?

16 A. There's not been an update to
17 this document.

18 Q. Did you ever -- if you go -- I
19 think in Exhibit A it identifies
20 custodians. Scroll down a little bit.

21 MR. BATTER: Ryan, before you ask
22 that question, given the time we've
23 been going, maybe when you finish with
24 this document, it would be appropriate
25 time for a break.

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1 discuss at the August 7th, 2023 meeting?

2 A. Other than the litigation, I
3 don't -- I mean -- yeah, we didn't need
4 anyone, and I didn't want, and the
5 instruction was not to talk about the
6 Nektar litigation in the Microsoft Teams.
7 We didn't want them to talk about the
8 Nektar-Lilly relationship in the Microsoft
9 Teams. These were matters that were
10 really for the lawyers.

11 Q. Were there any other subjects you
12 directed Nektar employees not to discuss
13 at the August 7, 2023 meeting, other than
14 what you just answered?

15 A. I think -- and I mentioned, you
16 know, if there were legal questions,
17 right, that that should be something
18 directed to me.

19 Q. Anything else?

20 A. I don't -- I don't recall
21 anything else.

22 Q. And after the August 7, 2023
23 meeting, including the instructions you
24 provided, you left it to the employees of
25 Nektar to comply with the directions you

1 knowledgeable about what was going on in
2 realtime. So at least in that regard, you
3 know, there was some basis to have a level
4 of monitoring.

5 Q. Other than being a recipient of
6 Teams and occasionally receiving a message
7 from your employees to you, you left it to
8 your employees to ensure they were
9 following the directions you provided at
10 the August 7th meeting?

11 MR. BATTER: Same objection.

12 A. Yeah, and -- yes, and those
13 employees, I believe, understood their
14 obligations, and I think that was
15 reasonable.

16 Q. So, Mr. -- let's change subjects,
17 Mr. Wilson.

18 Nektar issued its litigation hold
19 notice in June 2023, correct?

20 A. Correct.

21 Q. And that was shortly after you
22 retained Quinn Emanuel in this case,
23 correct?

24 A. Correct.

25 Q. In February 2023, Nektar and

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1 But I believe those two have.

2 Q. Okay. Other than those two, you
3 can't remember the identity or role of
4 anyone who has sent you a Teams chat, as
5 you sit here today, fair?

6 MR. BATTER: Objection.

7 A. Yeah, I don't -- I don't
8 recollection of specific other people.

9 MR. MOORMAN: Okay. I have no
10 further questions.

11 EXAMINATION BY

12 MR. BATTER:

13 Q. All right, Mr. Wilson, thank you
14 very much for being with us today. I
15 probably have 10 or fewer minutes of
16 questions for you, okay.

17 A. Okay.

18 Q. I'd like to start by something
19 some of the expertise and experience with
20 document preservation in litigation.

21 At the time Nektar filed suit
22 against Lilly, how large was Nektar's
23 legal department?

24 A. We had two attorneys.

25 Q. And who were the two attorneys?

1 A. Myself and Elizabeth Zhang.

2 Q. And that was the totality of

3 Nektar's legal department?

4 A. Yeah, those were the lawyers in

5 the legal department, yes. We have one

6 paralegal.

7 Q. Are there any lawyers on Nektar's

8 legal team dedicated to litigation?

9 A. No.

10 Q. Has Nektar ever had a litigation

11 department?

12 A. No.

13 Q. How many years have you been at

14 Nektar?

15 A. In total, 23, about 23.

16 Q. And during that entire time

17 period -- excuse me, let me start that

18 over.

19 For that entire period of time,

20 are your answers the same, that there have

21 been no Nektar lawyers dedicated to

22 litigation?

23 A. Correct. In the 23 years I've

24 been here, there have been no litigation

25 specialists, no litigation lawyers.

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1 Q. Is your background in litigation?

2 A. No.

3 Q. What is your background in?

4 A. Intellectual property, patents --

5 Q. Sorry, go ahead. I cut you off.

6 A. Intellectual property, patents

7 primarily.

8 Q. But not patent litigation?

9 A. Correct. Patent prosecution and
10 preparation in prosecution for patents.

11 Q. What about Gil Labrucherie,
12 L-A-B-R-U-C-H-E-R-I-E, Nektar's former
13 general counsel, did he have a litigation
14 background?

15 A. No.

16 Q. And what was his background in?

17 A. He was corporate governance,
18 financings. That is what his focus was,
19 practice was.

20 Q. Is Nektar often involved in
21 litigation?

22 A. No.

23 Q. And in the instances where Nektar
24 is involved in litigation, is it typically
25 the case that a partner is leading that

1 litigation, Nektar is not?

2 A. Yes, and I mentioned earlier, you
3 know, we're often pulled in as a necessary
4 party, if it's a Nektar patent or Nektar
5 inventors and it's the partner that really
6 leads the litigation.

7 Q. Other than in this case against
8 Eli Lilly, how many cases has Nektar been
9 involved in where it is the plaintiff?

10 A. I am aware of an arbitration for,
11 I don't know, maybe about 8, 10 years ago
12 where we would have been a plaintiff. But
13 in terms of, you know, litigation, I think
14 this is the only one, at least that I'm
15 aware of.

16 Q. How many employees does Nektar
17 currently have?

18 A. About 60.

19 Q. In the last five years, have you
20 issued many litigation hold notices?

21 A. No, no, not at all.

22 Q. Any other hold notices in 2021,
23 '22, '23, '24, '25, other than the Lilly
24 hold notice in 2023?

25 A. Other than the Lilly litigation

1 hold notice in '23, nothing in '21 or any
2 since.

3 Q. Was Teams chats or preservation
4 of Teams chats ever at issue in any other
5 litigation in which Nektar has been
6 involved?

7 A. No.

8 Q. Has Nektar ever previously been
9 criticized for preservation or lack
10 thereof of Teams chats?

11 A. No.

12 Q. Earlier you testified about the
13 August 30th -- excuse me, let me start
14 that over.

15 Earlier you testified about the
16 August 7, 2023 meeting where you
17 instructed employees on the appropriate
18 use of Teams chats.

19 Do you recall that?

20 A. I do.

21 Q. How many people from Nektar
22 attended that meeting?

23 A. I think it was everyone who
24 reported to JZ, and so that's probably two
25 dozen, maybe even close to 30.

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1 Q. So is your best estimate 24 to 30
2 people?

3 A. Yeah, I think that's about right.

4 Q. At that August 7th meeting after
5 you gave your instruction on appropriate
6 chat usage, did you ask employees to come
7 to you if they had any questions, if they
8 didn't understand your instruction or had
9 issues complying with your instruction?

10 A. I believe I already said --
11 answered that question, but yes.

12 Q. Did anyone ever come to you to
13 say they had a question or concern about
14 your instruction?

15 A. No.

16 Q. It sounds like, based upon your
17 own personal experience as well as looking
18 at some of the recent chats Nektar began
19 preserving and produced, it seems
20 employees followed your instruction, is
21 that fair?

22 MR. MOORMAN: Objection.
23 Objection. Leading.

24 A. I mean, yes. My review and my
25 experience is that people have followed

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1 the guidance.

2 Q. And what is your -- given
3 counsel's objection to my question being
4 leading -- what is the basis of your
5 testimony that people who received your
6 instruction have been abiding by it?

7 MR. MOORMAN: Objection.

8 Leading. You can't lead the witness
9 and then just ask another question.

10 Q. You can answer.

11 A. So, and again, I think we covered
12 this, but I've said that my own experience
13 of being, receiving these chats, they're
14 very consistent with my expectation of the
15 guidance. I believe that when we have the
16 chats that were embedded, they were also
17 of a nature that is consistent with the
18 guidance, and the recent chats that we've
19 collected also proves that out.

20 Q. With respect to your August 7th
21 instruction, were you leaving it up to
22 Nektar employees to decide whether
23 documents and emails were being preserved?

24 A. No. Again, the document -- I'm
25 sorry, did you say the document notice or

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1 the August 7th?

2 Q. No, I wanted to differentiate
3 between chats on the one hand and
4 documents and emails.

5 So with that understanding, I'd
6 like to ask first about documents and
7 emails, not about chats.

8 So with respect to your August
9 7th instruction, were you leaving it up to
10 Nektar employees to decide whether to
11 preserve emails and documents?

12 A. No. The practice was that those
13 were preserved and preserved indefinitely
14 documents and emails.

15 Q. So with respect to documents and
16 emails, employees had no discretion as to
17 whether they were preserved, is that fair?

18 A. Correct.

19 Q. Now I'd like to ask a similar
20 question about Teams chats.

21 With respect to your August 7th
22 instruction regarding chats, did you leave
23 it up to employees to decide whether they
24 would abide by your instruction not to use
25 Teams chats to discuss Lilly or the

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1 lawsuit?

2 A. So for the Teams chats, we have,
3 you know, the guidance, first of all, that
4 I believe everyone is following and should
5 follow because that's the directive.

6 And secondly, the practice that
7 folks followed are non-substantive and so
8 they are not chatting about the lawsuit or
9 the relationship. And given the nature of
10 the platform itself, it just doesn't lend
11 itself to, you know, substantive
12 discussions.

13 Q. Did you give employees discretion
14 as to whether to follow your instruction?

15 A. No.

16 MR. BATTER: No further
17 questions.

18 FURTHER EXAMINATION

19 BY MR. MOORMAN:

20 Q. When you say you didn't give
21 employees discretion to follow your
22 instruction, first, what instruction are
23 you referring to?

24 A. The instructions in the August
25 7th meeting. I think we've talked about

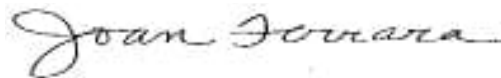
REPORTER CERTIFICATE

I, JOAN FERRARA, do hereby
certify:

That said proceedings were taken
at the time and place herein named;
and that the transcript is a true
record of the testimony as reported by
me, a disinterested person, and was
thereafter transcribed.

I further certify that I am not
interested in the outcome of the said
action, nor connected with, nor
related to any of the parties in said
action, nor to their respective
counsel.

IN WITNESS WHEREOF, I have
hereunto set my hand this 6th day of
May, 2025.

A handwritten signature in cursive script, reading "Joan Ferrara", is written over a horizontal line.

JOAN FERRARA, RMR, FCRR